

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18108 of 2015

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Lalita Devi, Wife of late Ravindra Kumar, resident of Adarsh Nagar, Anaith,
Dhobighatwa, P.S.- Nawadah, District- Bhojpur

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Education Department, Govt. of Bihar, Patna
3. The District Magistrate, Bhojpur at Ara
4. The District Education Officer, Bhojpur at Ara
5. The District Programme Officer (Establishment), Bhojpur at Ara
6. The Headmaster, Middle School, Belaur, Udwantnagar, Bhojpur
7. The Treasury Officer, Ara
8. The Accountant General (A & E), Bihar, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Prashant Sinha, Advocate
Mr. Ashok Kumar Verma, Advocate

For the Respondent-State : Mr. Lalan Kumar, AC to GP-9

For the Respondent-AG : Mr. Bindhyachal Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-03-2017

Heard learned counsel for the petitioner, learned
counsel for the State and learned counsel for the Accountant
General.

2. The petitioner seeks following reliefs in the instant
writ application:-



“(i) For necessary direction upon the respondent authorities to release the amount of pension and gratuity to the Petitioner as the same is not being released despite the orders being issued by the Accountant General to that effect for want of no dues certificate.

(ii) For necessary direction to the respondent authorities to issue no dues certificate so that the Petitioner may get the amount of pension and gratuity after the death of her husband.

(iii) For necessary direction to the respondent authorities to pay interest @ 18% per annum upon the amount of arrears of pension and gratuity payable to the Petitioner.

(iv) For issuance of writ in the nature of certiorari for quashing of memo no.-115 dt. 11.01.2016 issued by the District Programme Officer (Establishment), Bhojpur at Ara whereby a total amount of Rs.1100242/- (Rs. Eleven lacs two hundred and forty two only) has been illegally adjusted against the gratuity and pension dues of the late husband of the petitioner.”

3. The husband of the petitioner, namely, late Ravindra Kumar while working as Incharge Headmaster, Middle School, Belaur, Udwanthnagar in the district of Bhojpur died in harness on 14th March, 2015. After his death, the petitioner submitted her application for grant of death-cum-retiral benefits.



The amount of general provident fund, leave encashment and group insurance has already been paid to the petitioner. After sanction of pension and gratuity by the competent authority, the Accountant General issued payment orders for payment of pension and gratuity to the petitioner. Initially, the grievance of the petitioner was that despite authorization made by the Accountant General, Bihar, Patna, the respondents did not start payment of pension to the petitioner and the gratuity amount was also not paid to her.

4. On 15th December, 2015, when the matter was taken up by this Court, it was brought to its notice that Rs. 35,000/- is shown as outstanding against the deceased employee as the amount taken by him for Mid-day Meal scheme was not accounted for. Considering the value of the disputed amount, at that stage, it was submitted before the Court that the petitioner is ready for adjustment of the dues amount in accordance with law from her post-retiral dues, but the remaining amount ought to be paid to her. Subsequently, in its counter affidavit, the State took a plea that Rs.1100242/- under three different heads, i.e. Mid-day Meal scheme, scholarship amount and advance of building construction was found due against the deceased employee and, accordingly, the District Programme Officer (Establishment), Bhojpur at Ara issued a direction to the Treasury Officer, Bhojpur, Ara vide order as



contained in Memo No. 115 dated 11.01.2016 to recover the amount from the pension and gratuity of the petitioner.

5. By way of filing an interlocutory application vide I.A. No. 1081 of 2016, the aforesaid order as contained in Memo No. 115 dated 11.01.2016 (Annexure-6) has also been challenged by the petitioner.

6. It is submitted by the learned counsel for the petitioner that the amount of scholarship was distributed among the students during the lifetime of her husband. On inquiry, some of the teachers disclosed that the details of distribution of scholarship amount were also sent to the block office. Hence, it is wrongly shown that an amount of Rs. 4,32,600/- under the head scholarship was due against the petitioner's husband. It is further contended that so far as the amount of Mid-day Meal is concerned, since the petitioner has already conceded that the said amount be adjusted from the retiral dues of the petitioner, the petitioner would have no grievance if the said amount is adjusted against the retiral dues. However, the petitioner has disputed the fact that any amount of building advance was due against her deceased husband. It is contended that the entire service record of the husband of the petitioner was unblemished and he was never proceeded against either departmentally or criminally during his lifetime.



7. On the other hand, learned counsel for the State submitted that after the issuance of the pension payment order and gratuity payment order, it came to the knowledge of the District Programme Officer (Establishment), Bhojpur at Ara that Rs. 1100242/- is due under various heads against the deceased employee and, hence, he has rightly ordered for realization of the aforesaid amount from the death-cum-retiral dues. He submitted that no person can be allowed to be unduly benefited if the record speaks that the deceased employee owed certain money to the Government.

8. It would be evident from the perusal of the impugned order dated 11th January, 2016 that the District Programme Officer (Establishment), Bhojpur at Ara has directed for recovery of the entire gratuity amounting to Rs.10,00,000/- (rupees ten lakh) and Rs. 100242/- (rupees one lakh two forty two) from the family pension of the petitioner. The amount recoverable are as follows:-

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|---|----------------|
| (i) The amount of mid-day meal - | Rs.35,000-00 |
| (ii) Scholarship amount - | Rs.4,32,600-00 |
| (iii) Amount of building construction - | Rs.6,32,642-00 |

Total:- Rs. 11,00,242-00

9. On query made by the Court, learned counsel for



the State admitted that no disciplinary proceeding or criminal proceeding was initiated against the husband of the petitioner while he was alive. Learned counsel for the State also failed to refer to any rule empowering the State or any of its authority to recover from the post-retiral dues of the widow. The amounts shown as due under the heads scholarship and building construction are not admitted by the petitioner. In the opinion of this Court in case of dispute in respect of outstanding amount and in absence of any rule empowering the State to recover such disputed amount from the terminal benefits, no recovery can be made from the pension and gratuity amount.

10. As noted above, no proceeding was ever initiated against the deceased employee during his lifetime. The question of outstanding amount would also involve computation and fixation of liability. Such recovery of amount, under the given circumstances, can only be made by instituting a properly constituted money suit and not otherwise.

11. In that view of the matter, the impugned order as contained in Memo No. 115 dated 11.01.2016 issued under the signature of the District Programme Officer (Establishment), Bhojpur, Ara is quashed. The respondents are directed to make payment of amount of pension and gratuity to the petitioner within



two months from the date of receipt/production of a copy of the order.

12. The writ application stands allowed.

13. It is made clear that the State would be at liberty to recover the disputed amount by filing a properly constituted money suit.

14. The parties shall bear their own costs.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.03.2017
Transmission Date	NA

